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Daphne's Greek Cafe, a California corporation  
Debtor and Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re:  
  
FILI ENTERPRISES, INC., d/b/a Daphne's  
Greek Cafe, a California corporation,  
  
Debtor.

CASE NO. 10-bk-000324-PB

Chapter 11

**NOTICE OF FIRST DAY MOTION AND  
FIRST DAY MOTION BY DEBTOR FOR  
ORDER (A) AUTHORIZING INTERIM  
USE OF CASH COLLATERAL, (B)  
GRANTING ADEQUATE PROTECTION  
FOR USE OF PREPETITION  
COLLATERAL, AND (C) GRANTING  
RELATED RELIEF**

Date: TBD  
Time: TBD  
Place: Room 628  
Judge: The Hon. Peter W. Bowie

1 **TO THE HONORABLE PETER W. BOWIE, UNITED STATES BANKRUPTCY JUDGE,**  
 2 **SECURED CREDITORS, THE TWENTY LARGEST UNSECURED CREDITORS AND**  
 3 **THE UNITED STATES TRUSTEE:**

4 **PLEASE TAKE NOTICE** that pursuant to Section 363(c) of the Bankruptcy Code, Rule  
 5 4001(b) of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), the “Guidelines for  
 6 First Day Motions” (“First Day Motions Guidelines”) and “Guidelines for Motions to Use Cash  
 7 Collateral or to Obtain Credit” (the “Cash Collateral Motion Guidelines”) appended to the Local  
 8 Bankruptcy Rules of the United States Bankruptcy Court for the Southern District of California  
 9 (the “Local Bankruptcy Rules”) as Appendices D1 and D2 respectively, Fili Enterprises, Inc.,  
 10 d/b/a Daphne's Greek Cafe, a California Corporation, debtor and debtor in possession in this case  
 11 (the “Debtor”) will and does hereby move the Court for the entry of interim and final orders  
 12 authorizing the Debtor to use cash collateral and granting related relief (the “Motion”). By the  
 13 Motion, the Debtor seeks an order (1) approving the use of cash collateral on an emergency  
 14 interim basis, subject to a Budget and pending a final hearing, in such amounts necessary to  
 15 enable the Debtor to operate its business and avoid immediate and irreparable harm; (2) granting  
 16 adequate protection to Bank of America on an interim basis; and (3) scheduling and establishing  
 17 deadlines regarding a final hearing on the Debtor’s use of cash collateral.

18 **PLEASE TAKE FURTHER NOTICE** that in accordance with Bankruptcy Rule  
 19 4001(b)(1)(C) and as required by paragraph 1 of the Court’s Guidelines for First Day Motions, the  
 20 Debtor has served the Notice of the Motion and the Motion itself on the following parties or  
 21 counsel for parties in interest on January 11, 2010: the United States Trustee, any committee of  
 22 creditors or equity security holders established prior or subsequent to the chapter 11 filing or, if  
 23 none, the twenty largest unsecured creditors and any secured creditor whose collateral includes cash  
 24 collateral or whose lien(s) might be affected by the relief sought; as required by paragraph 1 of the  
 25 Court’s Guidelines for First Day Motions service was made by facsimile, personal service or other  
 26 electronic means (by consent) provided, however, that Express or Overnight Mail was used where  
 27 the Debtor was unable to notify by facsimile, personal service or other electronic means.

28 **PLEASE TAKE FURTHER NOTICE** that this Motion is based on the attached

1 Memorandum of Points and Authorities, the Declaration of George Katakalis In Support of  
2 First Day Motions filed concurrently herewith, arguments of counsel, and other admissible  
3 evidence properly before this court at or before the hearing on this Cash Collateral Motion. In  
4 addition, the debtor requests that the Court take judicial notice of all documents filed with the  
5 court in this case.

6  
7 **PLEASE TAKE FURTHER NOTICE THAT THIS IS A FIRST DAY MOTION**  
8 **FILED IN ACCORDANCE WITH APPENDIX D1 OF THE LOCAL BANKRUPTCY**  
9 **RULES FOR THE SOUTHERN DISTRICT OF CALIFORNIA (“LOCAL BANKRUPTCY**  
10 **RULES”). AS REQUIRED BY APPENDIX D1 OF THE LOCAL BANKRUPTCY RULES**  
11 **(“GUIDELINES FOR FIRST DAY MOTIONS”), ANY PARTY IN INTEREST WHO**  
12 **OPPOSES THIS CASH COLLATERAL MOTION SHALL IMMEDIATELY NOTIFY**  
13 **THE JUDGE’S LAW CLERK OF ITS POSITION BY TELEPHONE AT (619) 557-5158.**  
14 **NO WRITTEN OPPOSITION SHALL BE FILED TO THIS CASH COLLATERAL**  
15 **MOTION TO UNLESS THE COURT OTHERWISE DIRECTS. PLEASE NOTE THAT**  
16 **THE FAILURE TO NOTIFY THE COURT OF OPPOSITION TO THIS CASH**  
17 **COLLATERAL MOTION MAY BE DEEMED TO BE CONSENT TO THE RELIEF**  
18 **REQUESTED, AND THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE**  
19 **OR A HEARING.**

20  
21 Dated: January 11, 2010

DLA PIPER LLP (US)

22  
23 By /s/ Brendan P. Collins  
BRENDAN P. COLLINS  
24 [Proposed] Attorneys for Fili Enterprises, Inc.,  
d/b/a Daphne’s Greek Café, a California  
25 corporation, Debtor and Debtor-in-Possession  
26  
27  
28

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. JURISDICTION**

This court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This proceeding is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper under 28 U.S.C. §§ 1408 and 1409.

The statutory predicates for the relief requested herein are 11 U.S.C. §§ 361, 363(c)(2)(B) and (c)(3), and Bankruptcy Rule 4001.

### **II. BACKGROUND FACTS**

The facts relevant to this Motion, along with a detailed summary of the Debtor's business, financial and operational history and a description of the facts leading up to the Chapter 11 filing, are set forth in the Declaration of George Katakaidis Filed in Support of First Day Motions (the "Katakaidis Declaration") filed concurrently herewith.

### **III. RELIEF REQUESTED**

By this Motion, the Debtor requests the entry of an order in substantially the form of the attached Exhibit "B:" (1) approving the use of cash collateral on an emergency interim basis, pending a final hearing, in accordance with the Budget (defined below), to enable the Debtor to operate its business and avoid immediate and irreparable harm to the estate<sup>1</sup>; (2) granting adequate protection to Bank of America on an interim basis; and (3) scheduling and establishing deadlines regarding a final hearing on the Debtor's use of cash collateral.

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<sup>1</sup> The Debtor requests that it be allowed to use cash collateral through the week ending February 8, 2009 with an interim hearing set for the week of February 1, 2010.

1 **IV. LEGAL ARGUMENT**

2 **A. The Debtor Has An Immediate Need For Use Of Cash Collateral And Has**  
 3 **Provided Bank Of America With Adequate Protection**

4 **1. The Debtor's Immediate Need for use of Cash Collateral**

5 In anticipation of this case, and with the assistance of its financial advisors, the Debtor has  
 6 developed cash flow projections reflecting anticipated revenue and expenditures through the week  
 7 ending April 25, 2010, contained in the proposed cash collateral and operating budget (the  
 8 "Budget") attached hereto as Exhibit "A" (however, on a monthly basis the Debtor seeks  
 9 authority to exceed the aggregate amount of the Budget by twenty percent (20%)). The Budget,  
 10 which was reviewed and approved by George Katakalis, sets forth the amount of cash necessary  
 11 for the Debtor to operate its business post-petition. The Budget takes into account the effect this  
 12 bankruptcy filing may have on the Debtor's business and Debtor's cost cutting measures  
 13 identified in the Katakalis Declaration.

14 As set forth in the Budget, the Debtor seeks authority to use cash on hand (approximately  
 15 \$1 million as of the Petition Date) and funds generated from operation of its business. Such cash  
 16 and receipts constitute "cash collateral" within the meaning of section 363(a) of the Bankruptcy  
 17 Code. Bank of America asserts a lien on substantially all of the Debtor's assets, including cash  
 18 collateral.

19 The Debtor has an immediate need for the use of cash collateral in order to maintain its  
 20 business operations, which includes 68 restaurant locations, a website, and a corporate office.  
 21 The Debtor's expected use of cash collateral during the interim and final periods is reflected in  
 22 the Budget. All payments described in the Budget are necessary to maintain and continue the  
 23 Debtor's operations and preserve its going concern value for the benefit of the Debtor's creditors.  
 24 Specifically, the Debtor must have access to cash collateral to make payments to its vendors for  
 25 post-petition goods, employees, sales taxes, utilities, rent, and other pertinent, ordinary expenses  
 26 of its business.<sup>2</sup> Failure to make payments in accordance with the Budget would likely result in  
 27

28 <sup>2</sup> This includes payment to Radiant Systems, the Debtor's Point of Sale service provider for January 2010 services.

1 the cessation of the Debtor's business, causing immediate and irreparable harm to the Debtor's  
 2 estate. Because the liquidation value of the Debtor's assets is substantially less than the going  
 3 concern value, all creditors (including Bank of America) would receive substantially less in  
 4 liquidation than they would receive if the Debtor is allowed to operate and propose a plan of  
 5 reorganization. Put simply, the Debtor cannot continue operations without the use of cash  
 6 collateral, and if the Debtor is unable to operate, all parties will be harmed.

7  
 8 **2. *The Debtor Will Provide Adequate Protection to Bank of America  
 Through the Granting of Replacement Liens***

9  
 10 On Friday, January 8, 2010, the Debtor and Bank of America resumed discussions to  
 11 reach a stipulation for the use of cash collateral and those discussions are ongoing. Nevertheless,  
 12 a stipulation has not yet been reached. Therefore, the Debtor makes this Motion pursuant to Rule  
 13 4001(b) for an order authorizing it to use cash collateral without Bank of America's consent. The  
 14 Debtor is hopeful that a cash collateral stipulation can be reached with Bank of America and  
 15 presented to the Court for approval. If an agreement cannot be reached, the Debtor will request  
 16 permanent use of cash collateral at the Final Hearing on this Motion.

17 It is universally acknowledged that the debtor's cash "is the life blood of the business" and  
 18 the bankruptcy court must assure that such life blood "is available for use even if to a limited  
 19 extent." *In re Mickler*, 9 B.R. 121, 123 (Bankr. M.D. Fla. 1981). If a secured creditor does not  
 20 consent to the use of its cash collateral, the court can authorize the debtor-in-possession to use  
 21 said cash collateral under Bankruptcy Code §363(c)(2)(B) if the court determines that the debtor  
 22 has provided "adequate protection" of the secured creditor's interest in the cash collateral.

23 Although the term "adequate protection" is not explicitly defined by the Bankruptcy Code,  
 24 Section 361 of the Bankruptcy Code provides that when adequate protection is required, it may be  
 25 provided by:

26 (1) Requiring the trustee to make a cash payment or periodic cash  
 27 payments to such entity, to the extent that the ...use...under  
 section 363 of this title...results in a decrease in the value of such  
 entity's interest in such property;

28 (2) providing to such entity an additional or replacement lien to

the extent that such ....use...results in a decrease in the value of such entity's interest in such property; or

(3) Granting such other relief...as will result in the realizing by such entity of the indubitable equivalent in such entity's interest in such property.

Neither Section 361 nor any other provision of the Bankruptcy Code defines the nature and extent of the "interest in property" of which a secured creditor is entitled to adequate protection under Section 361. However, the statute plainly provides that a qualifying interest demands protection only to the extent that the use of the creditor's collateral will result in a decrease in the "value of such entity's interest in such property." 11 U.S.C. §§ 361, 363(e). *See First Federal Bank of California v. Weinstein (In re Weinstein)*, 227 B.R. 284, 296 (B.A.P. 9th Cir. 1998); *Deico Elecs., Inc. (In re Deico Elecs., Inc.)*, 139 B.R. 945, 947 (B.A.P. 9th Cir. 1992); *General Electric Mortgage Corp. v. South Village, Inc. (In re South Village, Inc.)*, 25 Bankr. 987, 989-990 n.4 (Bankr. D. Utah 1982).

The phrase "value of such entity's interest" was addressed by the Supreme Court in the landmark decision, *United Savings Assoc. of Texas v. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365, 108 S. Ct. 626, 98 L.Ed.2d 740 (1988). For the meaning of "value of such entity's interest," the Supreme Court was guided by Section 506(a) of the Bankruptcy Code which defines a secured creditor's claim:

The phrase "value of such creditor's interest in §506(a) means the value of the collateral." H.R. Rep. No. 950-595, pp.181, 356 (1977); see also S. Rep. No. 95-989, p. 68 (1978), U.S. Code Cong. & Admin. News, 1978 pp. 5787, 5854, 6141, 6312. We think the phrase "value of such entity's interest" in §361(1) and (2), when applied to secured creditors means the same.

*Id.* at 630. *Timbers* instructs that a secured creditor is entitled to adequate protection only against the diminution in the value of the collateral securing the creditors' allowed secured claim. Under *Timbers*, therefore, where the value of the collateral is not diminishing by its use, sale, or lease, the creditor's interest is adequately protected. This conclusion flows from the notion that the "value of such entity's interests" is the equivalent to "value of the collateral."

Because Bank of America asserts a lien on the Debtor's pre-petition cash collateral, as adequate protection for Bank of America, the Debtor proposes to grant Bank of America, effective immediately and without the necessity of the execution by the Debtor of any financing statements or other documentation, in accordance with section 361(2) of the Bankruptcy Code, a valid, perfected, enforceable and non-avoidable replacement lien on each and all of the Debtor's postpetition assets and the proceeds thereof, including cash flow generated from operations ("Postpetition Collateral") and including the prepetition collateral, but only if and to the extent that (i) Bank of America's pre-petition security interests are valid, enforceable, properly perfected, and unavoidable, and (ii) the Debtor's use of cash collateral results in a diminution of value of Bank of America's collateral. Any replacement lien would exclude causes of action arising under Section 105, 506(c), 542, 543, 544, 545, 547, 548, 549, 550, 551, 552, and 553 of the Bankruptcy Code. While the Debtor's use of cash collateral will reduce the prepetition cash collateral, the operation of the business will continue to generate cash to replenish the consumed cash collateral. Granting Bank of America a replacement lien on the Postpetition Collateral adequately protects Bank of America's position by giving them an ongoing interest in post-petition cash generated.

**3. *The Preservation and Enhancement of the Collateral Relating From the Debtor's Ongoing Operations Affords Further Adequate Protection to Bank of America***

Allowing the Debtor to use cash collateral to finance its ongoing operations will preserve and enhance Bank of America's collateral. The value of the Debtor's assets is primarily the value of the revenue generated by operation of the restaurants as well as the goodwill associated with the Debtor's business. The Debtor's ability to maximize the value of these assets is inextricably tied to maintaining the going concern value of the business, which in turn is dependent on having cash available to pay for operating expenses. The Debtor is a retail restaurant business and without the continuity of operations and an uninterrupted ability to conduct business, the Debtor could face significant customer defection, which would have an immediate and devastating effect upon the Debtor's future revenues and opportunity for reorganization. If the Debtor does not



1 have access to cash to pay its operating expenses, even for a short amount of time, it would in all  
 2 likelihood be forced to shut down and would be liquidated for far less than fair value. As such,  
 3 the use of cash collateral (including all cash existing on the petition date plus all post-petition  
 4 revenue generated) to conduct the Debtor's business will not only preserve and protect the value  
 5 of Bank of America's collateral generally – thus providing Bank of America with adequate  
 6 protection of its interests – it will enhance and maximize the potential recovery for all creditors of  
 7 the estate.

8 It is well established that a bankruptcy court, where possible, should resolve issues  
 9 presented to it in favor of reorganization rather than force liquidation because the business cannot  
 10 use cash or other property. *See In re Bonner Mall Partnership*, 2 F.3d 899, 915 (9th Cir. 1993)  
 11 (“Chapter 11 has two major objectives: 1) to permit successful rehabilitation of debtors and 2) to  
 12 maximize the value of the estate.”) (*citing Toibb v. Radloff*, 501 U.S. 157 (1991); *NLRB v.*  
 13 *Bildisco and Bildisco*, 465 U.S. 513, 527 (1984)); *In re Dynaco Corp.*, 162 B.R. 389 (Bankr. D.  
 14 N.H. 1993); *In re Hoffman*, 51 B.R. 42, 47 (Bankr. W.D. Ark, 1985); *In re A&B Heating and Air*  
 15 *Conditioning, Inc.*, 48 B.R. 401, 403-04 (Bankr. N.D. Fla. 1985); *In re Heatron, Inc.*, 6 B.R. 493,  
 16 496 (Bankr. W.D. Mo. 1980). As the *Heatron* court stated in granting a debtor's motion to use  
 17 cash collateral:

18 At the beginning of the reorganization process, the Court must  
 19 work with less evidence than might be desirable and should resolve  
 20 issues in favor of the reorganization where evidence is conflicting.

21 *Id.* at 496.

22 In *MBank Dallas, N.A. v. O'Connor (In re O'Connor)*, 808 F.2d 1393, 1397-98 (10th Cir.  
 23 1987), the court summarized the foregoing principle as follows:

24 Because the ultimate benefit to be achieved by a successful  
 25 reorganization inures to all the creditors of the estate, a fair  
 26 opportunity must be given to the Debtor to achieve that end. Thus,  
 27 while interests of the secured creditor....are of concern to the  
 28 court, the interests of other creditors also have a bearing on  
 whether the use of cash collateral should be permitted during the  
 early stages of the administration.

The first effort of the court must be to insure the value of the collateral will be preserved. Yet, prior to confirmation of a plan of reorganization, the test of that protection is not by the same measurements applied to the treatment of a secured creditor in a proposed plan. In order to encourage the Debtors' efforts in the formative period prior to the proposal of reorganization, the court must be flexible in applying the adequate protection standard.

*Id.* at 1397-98. This principle applies equally to efforts to realize the highest value through going concern value.

Applying the foregoing, courts have frequently allowed a debtor to use cash collateral in circumstances where such use would enhance or preserve the value of the collateral. Thus, for example, in *In re Stein*, 19 B.R. 458 (Bankr. E.D. Penn. 1982), the court allowed a debtor to use cash collateral where the secured party was undersecured and had no cushion for protection. As in the present case, the court in *Stein* found that the use of cash collateral was necessary to the continued operations of the debtor and the "creditor's secured position can only be enhanced by the continued operation of the [debtor's business]." *Id.* at 460. *See also, In re Pine Lake Village Apt. Co.*, 16 B.R. 750 (Bankr. S.D.N.Y. 1982) (debtor permitted to use cash collateral generated from rental income to enhance value of real property and secured creditor's claim).

The foregoing holdings arise from the more general principle discussed above that a secured creditor is only entitled to adequate protection of the value of the collateral securing the creditor's secured claim. *See Timbers, supra*, at 629-30. Where, as here, the continuation of the debtor's business preserves the value of the creditor's collateral, the debtor's continued operations constitute adequate protection of the secured creditor's interests in the collateral. Coupled with the proposed replacement liens, there is no question that Bank of America is adequately protected.

**B. Emergency relief and Interim approval of debtor's use of cash collateral should be granted**

The authorization to use cash collateral pending a final hearing will preserve the value of the Debtor's business only if authorization is granted immediately. Section 363(c)(3) of the Bankruptcy Code and Bankruptcy Rule 4001(b)(2) require the Court to schedule a cash collateral

1 hearing in accordance with the needs of the debtor and conduct a preliminary hearing for the  
2 purpose of authorizing the use of cash collateral to avoid irreparable harm.<sup>3</sup>

3 In the present case, emergency use of cash collateral by the Debtor, pending a final  
4 hearing, is necessary to prevent irreparable harm to the Debtor. If there is any interruption in the  
5 Debtor's restaurant operations, the value of the business will be significantly impaired to the  
6 serious detriment of the Debtor, its creditors, employees and customers.

7 On the other hand, Bank of America will suffer little, if any, harm if interim relief is  
8 granted. To the extent that Bank of America has an interest in property of the estate which is  
9 worthy of adequate protection, that interest is adequately protected by the preservation of the  
10 value of its collateral through the Debtor's continued business operations and through the  
11 proposed replacement liens.

12 **C. Notice of this Motion complies with this Court's notice requirements and is**  
13 **appropriate**

14 As required by the Court's Guidelines for First Day Motions, the Debtor has "serve[d]  
15 written pleadings on parties or counsel for parties in interest, including the United States Trustee,  
16 any committee of creditors or equity security holders established prior or subsequent to the  
17 chapter 11 filing or, if none, the twenty largest unsecured creditors and any secured creditor  
18 whose collateral includes cash collateral or whose lien(s) might be affected by the relief sought."  
19 Guidelines for First Day Motions, ¶ 1. Furthermore – as required by the Court's Guidelines for  
20 First Day Motions – this service was "made by facsimile, personal service or other electronic  
21 means (by consent) provided, however, that Express or Overnight Mail may be used where a  
22 party is unable to notify by facsimile, personal service or other electronic means." *Id.* at ¶ 2.

23 Because the Debtor has complied with the notice requirements the Court's Guidelines for  
24 First Day Motions – and based on the existing exigent circumstances – the Debtor respectfully  
25 requests that the Court find that no further notice is required for this First Day Motion.

26  
27  
28 <sup>3</sup> Neither the Cash Collateral Motion nor Cash Collateral Order contain any of the items prohibited by this Court's  
checklist listed in Appendix D2 of the Local Bankruptcy Rules.

1 **V. CONCLUSION**

2 **WHEREFORE**, for all the foregoing reasons, and such additional reasons as may be  
3 addressed at the hearing on this Motion, the Debtor respectfully requests that this Court enter an  
4 order, substantially in the form of the attached Exhibit B: (a) granting interim approval of the use  
5 of cash collateral on an emergency basis, pending a final hearing, in accordance with the Budget;  
6 (b) granting adequate protection to Bank of America on an interim basis in the form of  
7 replacement liens to the extent necessary to protect Bank of America from a diminution in value  
8 of its collateral; (c) scheduling and establishing deadlines regarding a final hearing on the  
9 Debtor's use of cash collateral, and (d) granting such other and further relief as is just and proper  
10 under the circumstances.

11  
12 Dated: January 11, 2010

DLA PIPER LLP (US)

13  
14 By /s/ Brendan P. Collins  
15 BRENDAN P. COLLINS  
16 [Proposed] Attorneys for Fili Enterprises, Inc.,  
17 d/b/a Daphne's Greek Café, a California  
18 corporation, Debtor and Debtor-in-Possession  
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# EXHIBIT “A”

	January			February				March				April			
	1/17/10	1/24/10	1/31/10	2/7/10	2/14/10	2/21/10	2/28/10	3/7/10	3/14/10	3/21/10	3/28/10	4/4/10	4/11/10	4/18/10	4/25/10
<b>Operating</b>															
<b>Cash Receipts</b>															
Bank Deposits	882,361	855,674	785,942	777,788	748,498	722,824	763,455	718,350	737,497	729,623	864,885	867,510	747,695	757,608	772,750
Vendor Rebate (Pepsi/USF)	882,361	855,674	785,942	777,788	748,498	722,824	763,455	718,350	737,497	729,623	864,885	867,510	747,695	757,608	772,750
<b>Disbursements</b>															
Other/Prepaid	2,000	24,000	10,233	5,000	4,000	32,000	2,000	7,000	2,000	22,000	4,000	5,000	2,000	24,000	2,000
Marketing					12,646	2,000	6,247	13,500		38,500	3,000	2,000	19,000	3,000	25,000
401K - Employee/er	3,000		3,000		3,000		3,000			3,000		3,000		3,000	
Vendor Payments - Product	240,047	246,752	239,289	219,789	217,508	209,317	202,138	213,500	200,887	206,241	204,039	241,865	242,599	209,093	211,865
Vendor Payments - Other Period Vendors	42,103	6,954	12,103	66,985	41,985	6,836	11,985	69,494	44,494	9,345	14,494	69,494	41,985	6,836	11,985
Rent/CAMs	-	-	591,822	-	-	-	-	592,826	-	-	-	602,215	-	-	-
Utilities					61,023	31,058	30,339	28,822	37,487	38,609	47,795	15,536	34,318	43,104	22,348
Capital Maintenance	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Insurance - WC and Commercial	21,625	-	-	10,000	21,625	-	-	15,000	21,625	-	-	26,000	21,625	-	-
Payroll and Taxes	550,000	-	513,000	-	499,000	-	451,000	-	454,000	-	447,000	-	421,000	-	454,000
Employee Benefits (Med, Dent,)		53,973				53,973				53,973				53,973	
Sales Taxes	-	17,000	326,721	-	-	17,000	257,534	-	-	17,000	223,345	-	-	-	17,000
Merchant fees/Bank Fees	-	-	-	49,161	-	-	-	43,038	-	-	-	41,817	-	-	-
<b>Disbursements - Operations</b>	859,775	349,679	1,697,168	351,935	861,788	353,185	965,243	984,180	761,493	389,668	944,673	1,007,928	783,528	344,006	745,199
<b>Net Cash flow From Operations</b>	<b>22,586</b>	<b>505,995</b>	<b>(911,226)</b>	<b>425,853</b>	<b>(113,290)</b>	<b>369,640</b>	<b>(201,788)</b>	<b>(265,830)</b>	<b>(23,996)</b>	<b>339,955</b>	<b>(79,789)</b>	<b>(140,418)</b>	<b>(35,832)</b>	<b>413,603</b>	<b>27,552</b>
Cumulative Cash Flow	22,586	528,581	(382,645)	43,208	(70,082)	299,558	97,769	(168,060)	(192,056)	147,899	68,111	(72,307)	(108,140)	305,463	333,014
<b>Non - Operating</b>															
<b>Cash Receipts</b>															
Other															
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Disbursements</b>															
Utility Deposits				140,000											
PACA Claims				122,734											
Consultant - Accounting (Retainer and Exp)	8075	8075	8075	8075	8075	8075	8075	8075	8075	8075	8075	8075	8075	8075	8075
Retainer/Fees - Retail Resource Group				10,000				10,000				10,000			
Legal, Consulting, Lenders and Committee	50,000				280,000				130,000					130,000	
Disbursements - Non-Operating	58,075	8,075	8,075	280,809	288,075	8,075	8,075	18,075	138,075	8,075	8,075	18,075	8,075	138,075	8,075
<b>Net Cash flow From Non-Operating</b>	<b>(58,075)</b>	<b>(8,075)</b>	<b>(8,075)</b>	<b>(280,809)</b>	<b>(288,075)</b>	<b>(8,075)</b>	<b>(8,075)</b>	<b>(18,075)</b>	<b>(138,075)</b>	<b>(8,075)</b>	<b>(8,075)</b>	<b>(18,075)</b>	<b>(8,075)</b>	<b>(138,075)</b>	<b>(8,075)</b>
Cumulative Cash Flow	(58,075)	(66,150)	(74,225)	(355,034)	(643,109)	(651,184)	(659,259)	(677,334)	(815,409)	(823,484)	(831,559)	(849,634)	(857,709)	(995,784)	(1,003,859)
<b>Total Net Cash Flow</b>	<b>(35,489)</b>	<b>497,920</b>	<b>(919,301)</b>	<b>145,044</b>	<b>(401,365)</b>	<b>361,565</b>	<b>(209,863)</b>	<b>(283,905)</b>	<b>(162,071)</b>	<b>331,880</b>	<b>(87,864)</b>	<b>(158,493)</b>	<b>(43,907)</b>	<b>275,528</b>	<b>19,477</b>
<b>Cumulative Total Net Cash Flow</b>	<b>(35,489)</b>	<b>462,431</b>	<b>(456,870)</b>	<b>(311,826)</b>	<b>(713,191)</b>	<b>(351,627)</b>	<b>(561,490)</b>	<b>(845,395)</b>	<b>(1,007,465)</b>	<b>(675,585)</b>	<b>(763,449)</b>	<b>(921,942)</b>	<b>(965,849)</b>	<b>(690,321)</b>	<b>(670,845)</b>
<b>Summary of Cash Activity</b>															
Beginning Cash	1,034,397	998,908	1,496,828	577,527	722,571	321,206	682,770	472,907	189,002	26,931	358,812	270,948	112,455	68,548	344,076
Total Net Cash Flow	(35,489)	497,920	(919,301)	145,044	(401,365)	361,565	(209,863)	(283,905)	(162,071)	331,880	(87,864)	(158,493)	(43,907)	275,528	19,477
<b>Ending Cash</b>	<b>998,908</b>	<b>1,496,828</b>	<b>577,527</b>	<b>722,571</b>	<b>321,206</b>	<b>682,770</b>	<b>472,907</b>	<b>189,002</b>	<b>26,931</b>	<b>358,812</b>	<b>270,948</b>	<b>112,455</b>	<b>68,548</b>	<b>344,076</b>	<b>363,552</b>

# EXHIBIT “B”

CSD 1001A [11/15/04]

Name, Address, Telephone No. &amp; I.D. No.

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**UNITED STATES BANKRUPTCY COURT**

SOUTHERN DISTRICT OF CALIFORNIA

325 West "F" Street, San Diego, California 92101-6991

In Re

FILI ENTERPRISES, INC., d/b/a Daphne's Greek Cafe, a California  
Corporation,

Debtor.

BANKRUPTCY NO.

Date of Hearing:

Time of Hearing:

Name of Judge:

**ORDER ON**

First Day Motion By Debtor For Order (A) Authorizing Interim Use Of Cash Collateral, (B) Granting Adequate Protection  
For Use Of Prepetition Collateral, And (C) Granting Related Relief

IT IS ORDERED THAT the relief sought as set forth on the continuation pages attached and numbered two (2)  
through 3 with exhibits, if any, for a total of 3 pages, is granted. Motion/Application Docket Entry No. \_\_\_\_\_

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DATED:

\_\_\_\_\_  
Judge, United States Bankruptcy Court

Signature by the attorney constitutes a certification under  
Fed. R. of Bankr. P. 9011 that the relief in the order is the  
relief granted by the court.

Submitted by:

DLA Piper LLP (US)

(Firm name)

By: /s/ Brendan P. CollinsAttorney for ☒ Movant ☐ Respondent



ORDER ON First Day Motion By Debtor For Order (A) Authorizing Interim Use Of Cash Collateral, (B)  
DEBTOR: FILI ENTERPRISES, INC., d/b/a Daphne's Greek Cafe, a California Corporation,

CASE NO:

Upon consideration of the First Day Motion By the Debtor For Order (A) Authorizing Interim Use Of Cash Collateral, (B) Granting Adequate Protection For Use Of Prepetition Collateral, And (C) Granting Related Relief (the "Cash Collateral Motion"), pursuant to sections 361, 363(c) and 363(e) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 4001(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); and it appearing that the Court has jurisdiction over the matter pursuant to 28 U.S.C. §§ 1334 and 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Cash Collateral Motion having been provided to the United States Trustee, any committee of creditors or equity security holders established prior or subsequent to the chapter 11 filing or, if none, the twenty largest unsecured creditors and any secured creditor whose collateral includes cash collateral or whose lien(s) might be affected by the relief sought, pursuant to the Court's Guidelines for First Day Motions; and the Court having found and determined that the requested relief sought in the Cash Collateral Motion is in the best interests of the Debtor, its estate, creditors, and all parties in interest and that the legal and factual bases set forth in the Cash Collateral Motion and in the concurrently filed Declaration of George Katakaidis Filed In Support Of First Day Motions (the "Katakaidis Declaration") establish just cause for the relief granted herein; the Court having heard the statements of counsel, having considered all relevant matters related thereto, and being otherwise fully advised in the premises; and after due deliberation and sufficient cause appearing thereof, the Court makes the following findings of fact and conclusions of law:

A. Adequate and sufficient notice of the Motion and interim hearing has been provided to all persons entitled thereto under Rule 2002 and 4001 of the Bankruptcy Rules and no further notice of the Motion is necessary.

B. This matter constitutes a "core proceeding" within the meaning of 28 U.S.C. §157.

C. This Court has jurisdiction over the parties and the subject matter of this proceeding pursuant to 28 U.S.C. §§1334 and 157.

D. It is in the best interests of the Debtor's estate that, in exchange for providing adequate protection to Bank of America as set forth below, the Debtor be allowed to utilize Cash Collateral (as defined below) under the terms and conditions set forth herein to permit the Debtor to operate its business attempt to propose a plan of reorganization.

E. Bank of America asserts that certain prepetition obligations were, as of the Petition Date, secured by a valid, enforceable and properly perfected liens on and security interests in substantially all of the Debtor's personal property and other assets (collectively, the "Prepetition Collateral"), including, without limitation, cash on hand of the Debtor and cash and receipts generated by the operation of the Debtor's business, which funds constitute "cash collateral" within the meaning of section 363 (a) of the Bankruptcy Code (the "Cash Collateral").

F. The Debtor has requested that the Court authorize the Debtor's use of Cash Collateral for the purposes set forth in the budget that is attached as Exhibit A to the Cash Collateral Motion, which may be supplemented or extended (the "Budget").

G. Subject to compliance with the conditions of this Interim Order, the Debtor is permitted to use Cash Collateral during the period, and in the amounts, set forth in the Budget and only for the purposes set forth herein.

H. This Interim Order is entered pursuant to, and shall be construed and be consistent with sections 361 and 363 of the Bankruptcy Code and Bankruptcy Rule 4001(b)(2).

IT IS ORDERED THAT:

1. The Debtor shall be, and hereby is, authorized to use Cash Collateral on the terms and conditions set forth in this Interim Order. The Debtor is authorized to use Cash Collateral in accordance with the Budget; provided, however, that the Debtor may exceed on a monthly basis the aggregate amount of the Budget by twenty percent (20%).

2. All objections to the Motion or the relief requested therein that have not been made, or that have been withdrawn, waived, or settled, and all reservations of rights included therein, hereby are overruled on the merits.

3. Because the Debtor's use of Cash Collateral may result in the diminution of the value of the Cash Collateral and Bank of America's interests therein, the Court hereby grants claims against the Debtor's estate in favor of Bank of America as adequate protection which claims shall be in the amount of any postpetition diminution in the value of Bank of America interests in the Cash Collateral (the "Adequate Protection Claims").

4. In order to secure the Adequate Protection Claims, Bank of America is hereby granted replacement security interests in and liens upon (collectively, the "Adequate Protection Liens") the Prepetition Collateral, all postpetition proceeds thereof and all postpetition assets of the Debtor (excluding, however, all claims, causes of action and proceeds thereof arising under sections 510, 544, 545, 546, 547, 548, and 549 of the Bankruptcy Code (collectively, "Avoidance Actions")) (the "Collateral"), whether such property and assets were acquired by the Debtor before or after the Petition Date, including: (a) all proceeds of the foregoing; (b) all accessions to, substitutions and replacements for, and profits and products of the foregoing; and (c) the Prepetition Collateral. The Adequate Protection Liens of Bank of America shall be subject only to valid, perfected, enforceable and unavoidable liens and security interests granted by the Debtor to any person or entity which were superior in priority to the prepetition security interests and liens held by Bank of America, and only to the extent such prepetition senior liens are not otherwise subject to avoidance or subordination.

5. Notwithstanding Bankruptcy Rule 7062, the terms and conditions of this Interim Order shall: (a) be immediately enforceable pursuant to Bankruptcy Rule 8005; and (b) not be stayed absent: (i) an application by a party in interest for such stay in conformance with such Bankruptcy Rule 8005; and (ii) a hearing upon notice to the Debtor.

6. The Debtor shall forthwith serve by first-class United States Mail a copy of this Interim Order upon Bank of America, the United States Trustee, the Debtor's twenty (20) largest creditors as determined in accordance with Bankruptcy Rule 1007(d) and any party having filed a request to receive service in this Chapter 11 Case.

7. The Debtor is authorized to use cash collateral through the week ending February 8, 2009 with an interim hearing set for for \_\_\_\_\_, 2010, at \_\_\_\_\_.m. The Hearing to consider the entry of a Final Order authorizing and approving use of Cash Collateral and providing adequate protection is hereby scheduled for \_\_\_\_\_, 2010, at \_\_\_\_\_.m. All objections to the entry of such Final Order authorizing the use of Cash Collateral shall be filed and received no later than \_\_\_\_\_, 2010, by counsel to the Debtor, Bank of America, any statutorily-appointed committee and the Office of the United States Trustee.

8. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

IT IS SO ORDERED.